

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	CASE NO. 8:04CR302
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
JAVIER CRUZ-NARANJO,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 166). The government has adopted the PSR. (Filing No. 167.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

Essentially, the Defendant objects to ¶¶ 14 (government's version of the offense); 18 and 27 (drug quantity); 20 (statement of officer; statement regarding lack of role adjustment); 28 (lack of adjustment for safety valve); 30 (lack of role adjustment); and the lack of an adjustment for a downward departure.

¶ 14 - Government's Version

The Court is not at liberty to change the government's version of the offense. The objection is denied.

¶¶ 18 and 27 - Drug Quantity

The Defendant pleaded guilty without signing a plea agreement. The objection to drug quantity will be heard at sentencing, and the government bears the burden of proof by a preponderance of the evidence.

¶20 - Lack of Role Adjustment

The Defendant objects to the lack of an adjustment for his alleged role as a minor or minimal participant. The objection will be heard at sentencing. The Defendant bears the burden of proof by a preponderance of the evidence.

¶28 - Safety Valve

The objection will be heard at sentencing. The Defendant bears the burden of proof by a preponderance of the evidence.

Downward Departure; U.S.S.G. § 5K2.0

No motion for downward departure has been filed, and the deadline for filing a motion for downward departure has passed. (Filing No. 172.) The objection is denied.

IT IS ORDERED:

1. The Defendant's Objections to ¶ 14 of the Presentence Investigation Report and to the lack of a downward departure pursuant to § 5K2.0 are denied;
2. The Defendant's objections to ¶¶ 18 & 27 (drug quantity), 20 (role) and 28 (safety valve) will be heard at sentencing. If the parties need more than 60 minutes for sentencing, they shall immediately contact Edward Champion, tel. 661-7377, and reschedule the hearing;

3. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

5. Absent submission of the information required by paragraph 4 of this Order, my tentative findings may become final; and

6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 10th day of November, 2005.

BY THE COURT:

s/ Laurie Smith Camp
United States District Judge